

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking  
on the Commission's Own Motion  
into Monitoring Performance of  
Operations Support Systems

R. 97-10-016

Order Instituting Investigation  
on the Commission's Own Motion  
into Monitoring Performance of  
Operations Support Systems

I. 97-10-017

**JOINT MOTION FOR ADOPTION OF PARTIAL SETTLEMENT AGREEMENT  
PURSUANT TO ARTICLE 13.5 OF THE COMMISSION'S RULES  
OF PRACTICE AND PROCEDURE**

Pursuant to Rule 51.1(c) of the Commission's Rules of Practice and Procedure, Pacific Bell Telephone Company ("Pacific"), GTE California, Incorporated ("GTE") (U 1002 C), AT&T Communications of California, Inc. ("AT&T") (U 5002 C), WorldCom, Inc. ("WorldCom"), Electric Lightwave, Inc. ("ELI") (U 5377 C), ICG Access Services, Inc. (U-5406), Sprint Communications Company L.P. ("Sprint") (U 5112 C), Covad Communications Co. (U-5752), Nextlink (U-5553), and Time Warner Telecom of California ("TWTC") (U 5358 C) (collectively, the "Settling Parties")<sup>1</sup> request that the Commission approve their amendments to the Joint Partial Settlement Agreement regarding Performance Measurements ("JPSA"), originally approved by the Commission on August 5, 1999 in D.99-08-020. A copy of the JPSA, as amended by the Settling Parties, is attached to this filing and is incorporated herein by reference.<sup>2</sup>

<sup>1</sup> AT&T, WorldCom, ELI, Covad, ICG, Sprint, Nextlink, and TWTC are collectively referred to as the CLECs.

<sup>2</sup> Attachment A is a clean copy of the revised JPSA. Attachment B is a redlined version reflecting the changes. Attachment C contains a brief explanation of the significant changes. Attachment D represents a list of issues that

The attached JPSA reflects the agreed upon modifications reached by the Settling Parties during the February 2000 review process. The Settling Parties submit that the JPSA continues to be reasonable in light of the whole record of competition in the California local exchange market, continues to be consistent with the stated objectives of the Commission in this proceeding, and continues to meet the Commission's public interest test for the approval of settlements.<sup>3</sup>

## **I. BACKGROUND**

On October 9, 1997, the Commission issued an order instituting a rulemaking proceeding and investigation (hereinafter, the "OSS OI") to accomplish several goals, including the determination of reasonable standards of OSS performance for Pacific and GTE, the development of a mechanism that will allow the Commission to monitor improvements in OSS performance, and the assessment of the best and fastest method of ensuring compliance if standards are not met, or improvement is not shown.<sup>4</sup>

Pursuant to the Commission's issuance of the OSS OI, the Settling Parties entered into lengthy and detailed negotiations to establish a set of performance measures consistent with the Commission's stated goals.<sup>5</sup> The Settling Parties filed a Joint Motion for approval of the JPSA on January 7, 1999, and filed motions on the remaining open issues on January 8, 1999. The Commission issued a decision approving the JPSA and resolving most of the remaining open issues on August 5, 1999. D.99-08-020.

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were raised and resolved during the negotiations (it is the working document used by the parties to track closed issues). Attachment E represents the list of open issues that will be addressed by the parties in subsequent filings.

<sup>3</sup> By seeking approval of the JPSA, the Settling Parties make no representation that the JPSA constitutes a definitive or a conclusive standard for Pacific's or GTE's compliance with the Telecommunications Act of 1996. In addition, AT&T continues to assert that parity, and not benchmarks, are the appropriate performance measures under applicable law. Likewise, by agreeing to the performance measures contained in the JPSA, Pacific and GTE do not make any commitment or admission regarding the propriety or reasonableness of establishing performance remedies.

<sup>4</sup> Order Instituting Rulemaking on the Commission's Own Motion into Monitoring Performance of Operations Support Systems (R.97-10-016), and Order Instituting Investigation on the Commission's Own Motion into Monitoring Performance of Operations Support Systems (I.97-10-017).

<sup>5</sup> A full history of the parties' negotiations and the basis for the development of the measures and standards contained in the JPSA is set forth in the Settling Parties' Joint Motion filed in this docket on January 7, 1999, and is incorporated by reference herein.

The JPSA, as approved by the Commission in August 1999, called for a periodic review commencing in February 2000. On March 24, 2000, Pacific gave written notice to all parties to this proceeding, pursuant to Rule 51.1(b), that a conference would be held at Pacific's offices, on March 31, 2000 and April 16, 2000, at Pacific's offices in San Ramon, for the purpose of discussing settlement of issues relating to OSS performance measurements. The Settling Parties have been engaged in this review process for the past few months. Numerous meetings were held subsequently to negotiate the issues raised during the review. Pacific provided written notice of those meetings as well.

## **II. SCOPE AND SUMMARY OF SETTLEMENT AGREEMENT**

The Settling Parties submit that the attached JPSA embodies the best efforts of the CLECs, Pacific, and GTE to modify, as necessary or appropriate, the performance measurements approved by the Commission in D.99-08-020. The attached JPSA resolves many of the issues identified by the Settling Parties during the February 2000 review. There are, however, some outstanding issues, as shown in Attachment E. The parties intend to file motions for the Commission's resolution of open issues in the next few weeks. The parties' motions should enable the assigned Administrative Law Judge to evaluate the state of the record on unresolved issues and to rule as needed. The parties propose, subject to Commission agreement, that motions be filed by July 31, 2000 and that replies to the motions be filed by August 8, 2000.

The attached JPSA represents an agreement by the Settling Parties regarding proposed changes and additions to the JPSA approved by the Commission in August 1999 (D.99-08-020). The purpose of the February 2000 review was to evaluate the effectiveness of the performance measures adopted in D. 99-08-020. In that vein, many aspects of the previously ordered JPSA were reviewed, and where the Settling Parties reached agreement to modify the JPSA adopted in August 1999, those modifications have been

incorporated in the revised JPSA attached to this motion. When an agreement was not reached on a requested change, an “Open Issue” has been designated for that requested change in Attachment E, and the original language has been retained. To the extent the Settling Parties could not agree on proposed changes or additions to the existing JPSA, those issues will be raised in their respective motions.

### **III. THE SETTLEMENT AGREEMENT IS REASONABLE AND IS IN THE PUBLIC INTEREST**

This Commission has recognized a strong public policy of this State favoring settlement. Re Pacific Bell, D.92-07-076, 45 C.P.U.C. 2d 158, 169 (1992). Commission policy also favors settlements that are “reasonable in light of the whole record, consistent with law, and in the public interest.” Re Application of GTE California Inc. for Review of the Operations of the Incentive-Based Regulatory Framework Adopted in Decision 89-10-031, D.96-05-037, slip op. (FOF 1) (May 8, 1996); Rule 51.1(e). The attached JPSA satisfies these requirements.

The attached JPSA was intended by the Settling Parties to be consistent with the laws governing OSS access. The Telecommunications Act of 1996 and the FCC’s implementing rules require Pacific and GTE to provide competing CLECs with nondiscriminatory access to OSS. In the August 1996 *Local Competition First Report and Order*, the FCC commented, generally, that ILECs must provide CLECs with access to the preordering, ordering, provisioning, billing, repair, and maintenance OSS subfunctions such that CLECs are able to perform such OSS functions in “substantially the same time and manner” as the ILECs can for themselves.<sup>6</sup> In August of 1997, the FCC’s *Ameritech Opinion* clarified that for those

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<sup>6</sup> See, *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd 15499, 15763-64 [¶518] (1996) (“*Local Competition First Report and Order*”), *aff’d in part and vacated in part sub nom. Competitive Telecommunications Ass’n v. FCC*, 117 F.3d 1068 (8th Cir. 1997) and *Iowa Utilities Bd. v. FCC*, 120 F.3d 753 (8th Cir. 1997), *modified on reh’g*, No. 96-3321 (Oct. 14, 1997) (*Rehearing Order*), *petition for cert. granted*, 118 S. Ct. 879 (1998).

OSS subfunctions with retail analogs, an ILEC “must provide access to competing carriers that is equal to the level of access that the [ILEC] provides to itself, its customers or its affiliates, in terms of quality, accuracy and timeliness.”<sup>7</sup> The FCC further clarified in the *Ameritech Opinion* that for those OSS functions with no retail analog, an ILEC must offer access sufficient to allow an efficient competitor “a meaningful opportunity to compete.”<sup>8</sup> The FCC continues to rely on these standards in its 271 review process.<sup>9</sup>

The agreed-to performance measures in the JPSA and the amendments to the JPSA resulting from the February 2000 review are consistent with the requirements of applicable law because they provide one objective means to help assess whether an ILEC is providing its competitors with sufficient, non-discriminatory access to OSS as required by the Act. The JPSA strikes a reasonable compromise between all parties’ interests in quantifying and evaluating Pacific’s and GTE’s OSS performance and the administrative burden and cost of performance monitoring.

The attached JPSA is also reasonable and in the public interest. The Settling Parties include many of the carriers that would be most directly affected by the standards by which Pacific’s and GTE’s OSS are provisioned. In turn, these CLECs also include wholesale customers who are most likely to compete against Pacific and GTE by providing local service options to California consumers.

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<sup>7</sup> See, *In the Matter of Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services In Michigan*, Memorandum Opinion and Order, 12 FCC Rcd 20543, 20618-19 [¶139] (1997) (*Ameritech Michigan Order*), writ of mandamus issued sub nom. *Iowa Utils. Bd. v. FCC*, No. 96-3321 (8th Cir. Jan. 22, 1998). (“*Ameritech Opinion*”); see also, *In the Matter of Application of BellSouth Corporation, et al., for Provision of In-Region, InterLATA services in Louisiana* (“*BellSouth (Louisiana II) Opinion*”) CC Docket No. 98-121, FCC 98-271 (10-13-98), paragraph 87 (citing, *Ameritech Opinion* at 12 FCC Rcd 20618-19).

<sup>8</sup> See, *Ameritech Opinion* at 12 FCC Rcd at 20619 [¶141]; See also, *BellSouth (Louisiana II) Opinion* at ¶87 (citing *Ameritech Opinion* at 12 FCC Rcd at 20619).

<sup>9</sup> See, *In the Matter of Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of New York*, CC Docket No. 99-295, FCC 99-404 (12-22-99), pp. 38-41.

#### **IV. THE JPSA SHOULD CONTAIN ONLY PERFORMANCE MEASURE LANGUAGE**

In its August 5, 1999 order, the Commission added certain language to the JPSA that affects the parties' rights and obligations regarding access to OSS and other UNEs. For example, in Measure 1, the Commission added the following language in the notes section:

GTE shall develop and implement processes to electronically respond to all pre-order queries except facilities availability inquiries. Those processes should be consistent with change management rules and be completed by October 4, 1999. Procedures for responding to facilities availability requests should be developed and a complete description of the proposed changes and a timeline for implementation submitted by February 1, 2000.

In negotiating amendments to the JPSA during the February 2000 review process, the parties wanted the freedom to negotiate and define the performance measures that would be used to evaluate OSS and UNE performance, without any concerns about whether the agreed-upon definitions or rules would affect their existing rights and obligations regarding OSS or UNE access. In particular, in agreeing to certain performance measures, the ILECs did not want the JPSA to be used by the CLECs as a means to argue that they were entitled to a particular manner of OSS or UNE access to which they were not otherwise entitled. Likewise, the CLECs did not want the JPSA to be used by the ILECs to restrict any pre-existing rights regarding OSS or UNE access. The parties agreed that those rights and obligations should be derived from other sources. Thus, the JPSA states the measures contained therein do not affect the parties' rights and obligations regarding UNE access, and that such rights and obligations are to be governed instead by the applicable federal and state laws, regulations, orders, and decisions, and the respective parties' interconnection agreements.

Accordingly, in this iteration of the JPSA, the Settling Parties have deleted certain language from the JPSA that had such effect. The Settling Parties agree that the removal of any such language from the JPSA shall not be used by the parties and should not be interpreted by the Commission as an admission that such language should have no further force and effect. Rather, the parties believe that such language

should not be included in the JPSA, a document that reflects the definitions, standards, and business rules of the performance measures. The Settling Parties expressly agree that any language added by the Commission to the JPSA in its decision of August 5, 1999 obligating GTE or Pacific to provide certain types of OSS access or to perform certain auditing or reporting requirements remains enforceable as part of that decision, and is not rendered unenforceable as a result of having been removed by the parties in this version of the JPSA.

The parties apologize for not bringing this issue to the Commission's attention in their comments to the August 5, 1999 decision. The Settling Parties respectfully request that any such language not be added to the JPSA in any future decisions, and that it be included instead in the ordering paragraphs of the Commission decision approving the JPSA.

## **V. CONCLUSION**

For the foregoing reasons, the Settling Parties submit that the attached JPSA meets the Commission's standards for a reasonable settlement. Accordingly, the Settling Parties respectfully request that the Commission approve the JPSA.

Dated: July 18, 2000

(Signature page follows)

On behalf of PACIFIC BELL TELEPHONE  
COMPANY and GTE OF CALIFORNIA, INC.

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